SUPREME COURT, U.S.
FILED
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OFFICE OF THE CLERK

No. 94-834

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

NORTH STAR STEEL COMPANY,
Petitioner,
v.
CHARLES A. THOMAS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT APPENDIX

VINCENT CANDIELLO *
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Attorney for Respondents

* Counsel of Record

PETITION FOR WRIT OF CERTIORARI FILED NOVEMBER 7, 1994
CERTIORARI GRANTED JANUARY 6, 1995

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The following opinion and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Opinion of the United States Court of Appeals for the Third Circuit, dated August 10, 1994 (Appendix A)	1a
Order of the United States District Court for the Middle District of Pennsylvania, dated May 25, 1993 (Appendix B)	17a
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U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
(WILLIAMSPORT)

Civil Docket for Case #: 92-CV-1507

THOMAS, *et al.*

v.

NORTH STAR STEEL COMPANY

DOCKET ENTRIES

DATE	PROCEEDINGS
10/22/92	COMPLAINT Receipt #: 151990 Amt: $120
10/22/92	Summons issued as to dft North Star Steel
10/22/92	Remark: summons and complaint along w/N/C to attorney
10/22/92	Remark: case file and docket sheet to CtRmDeputy
11/10/92	ANSWER and affirmative defenses by defendant North Star Steel [Entry date 11/12/92]
11/12/92	Remark: orders 1 and 2 to Candiello
11/27/92	RETURN OF SERVICE executed upon defendant North Star Steel 11/19/92 (ackn recd 11/27/92)
4/1/93	MOTION by plaintiffs for summary judgment, statement of material facts, affidavit, attachment, C of non-conc and S, propo [Entry date 04/02/93]
4/1/93	Brief by plaintiffs in support of motion for summary judgment [Entry date 04/02/93]
4/1/93	MOTION by defendant North Star Steel for summary judgment, w/attached statement of undisputed facts, C of non-conc and S, propo [Entry date 04/02/93]

DATE	PROCEEDINGS
4/1/93	Brief by defendant North Star Steel in support of motion for summary judgment, attachments [Entry date 04/02/93]
4/19/93	MOTION by plaintiffs to extend time to file brief in opposition to motion for summary judgment; as well for defendant to file brief in opposition to Plfs' motion for summary judgment, C of conc and S, propo
4/19/93	ORDER by Judge Malcolm Muir granting motion to extend time to file brief in opposition to motion for summary judgment; as well for Dft to file brief in opposition to Plfs' motion for summary judgment to 4/26/93
4/26/93	MOTION by plaintiffs to extend time to file brief in opposition to deft's motion for summary judgment
4/26/93	Brief by defendant North Star Steel in opposition to Plfs motion for summary judgment; reply brief due 5/10/93 [Entry date 04/28/93]
4/27/93	ORDER by Judge Malcolm Muir granting motion to extend time to file brief in opposition to dft's motion for summary judgment until May 3, 1993
5/3/93	Brief by plaintiffs in opposition to Dft motion for summary judgment; reply brief due 5/17/93 [Entry date 05/04/93]
5/3/93	Supplement by plaintiff re brief in opposition to Dft Motion for Summary Judgment (Appendix) [Entry date 05/04/93]
5/20/93	Reply brief by defendant in support of motion for summary judgment [Entry date 05/21/93]
5/21/93	Reply brief by plaintiff in support of motion for summary judgment

DATE	PROCEEDINGS
5/25/93	ORDER by Judge Malcolm Muir granting Dft motion for summary judgment, finding the motion for summary judgment of Plfs moot. Clerk to enter jgm on behalf of North Star Steel, Clerk to close file
5/25/93	JUDGMENT Case terminated in favor of Dft and against all Plfs
5/25/93	Remark—security copy and case file to S.C.O. from Wmpt this date
5/27/93	ORDER by Judge Malcolm Muir: first sentence of 2nd para of 5/25/93 order stricken; . . . following should be inserted: ". . . mass layoff of at least 50 employees"
5/27/93	Remark: doc 35 to SCR to be put w/closed file
5/27/93	CASE FILE TO FILES-R-US
6/2/93	BILL OF COSTS—submitted by defendant in the amount of $293.68. [Entry date 06/09/93]
6/2/93	BRIEF FILED—by defendant in support of bill of costs C of S on #36 and #37. [Entry date 06/09/93]
6/9/93	Remark; Docs 36 and 37 to BQ
6/10/93	MOTION by plaintiff to vacate judgment of 5/25/93
7/2/93	ORDER by Judge Malcolm Muir: plaintiffs may file brief in support of motion to vacate
7/19/93	Brief by plaintiff in support of motion to vacate judgment of 5/25/93 [Entry date 07/20/93]
8/6/93	Brief by defendant in opposition to motion to vacate judgment of 5/25/93 [Entry date 08/09/93]
8/26/93	ORDER by Judge Malcolm Muir denying motion to vacate judgment of 5/25/93

DATE	PROCEEDINGS
9/3/93	NOTICE OF APPEAL—by plaintiff from District Court order filed 8/26/93 and Order of 5/25/93. (Filing fee paid, TPO mailed to attorney, certified copies, notice of appeal, order being appealed, with info/ack letter, to USCA. (cc: cnsl, Ct.) $105.00 #58235 [Entry date 09/08/93] [Edit date 09/08/93]
9/9/93	Remark; File in Room 423
9/20/93	Notification by Circuit Court of Appellate Docket Number 93-7613 [Entry date 09/21/93]
9/24/93	Remark per phone call to Paul Levy resent TPO to atty
10/5/93	Transcript Purchase Order for dates: none TPO filed by attorney Paul Alan Levy. [Entry date 10/06/93]
10/5/93	Certified copy of docket in lieu of record on appeal transmitted to USCA [Entry date 10/06/93]
10/12/93	Acknowledgement Received from USCA of cert list in lieu of record on appeal [Entry date 10/13/93]
9/6/94	Certified copy of judgment from USCA reversing and remanding the Decision of the District Court [Appeal [43-1] for further proceedings consistent with the opinion of this Ct. Costs taxed against appellee. All of the above in accordance with the opinion of this Ct. Attached. Costs taxed in favor of Appellants, Charles A. Thomas, et al., as follows: Brief $114.80; Appendix $34.80; Reply brief $58.90; Docketing Fee $100.00; TOTAL—$308.40. [Entry date 09/22/94]
9/22/94	Remark Doc #47 & case file & updated copy of docket sheet to Wmspt
10/18/94	ORDER by Judge Malcolm Muir: case placed on March 1995 trial list [Entry date 10/20/94]

DATE	PROCEEDINGS
11/14/94	MOTION by defendant North Star Steel to continue dates listed in Court's scheduling Order of 10/18/94 for placing matter on trial list and for filing dispositive motions; C/S; Propo. [Entry date 11/15/94] [Edit date 11/15/94]
11/15/94	REMARK—Doc. #49 sent to Wmspt
11/17/94	ORDER by Judge Malcolm Muir: granting motion to continue dates listed in Court's scheduling Order of 10/18/94 for placing matter on trial list and for filing dispositive motions [49-1]; time for filing dispositive motions shall expire 30 days after US Supreme Court enters final order w/respect to North Star's petition for writ of cert

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7613

THOMAS, *et al.*

v.

NORTH STAR STEEL CO., INC.

DOCKET ENTRIES

DATE	PROCEEDINGS
9/15/93	CIVIL CASE DOCKETED. Notice filed by Charles A. Thomas, Darren S. Boop, Wayne D. Orner, Gerald W. Ranck, Harold E. Van Sickle, Richard A. Winter and Eugene L. Witmer.
9/15/93	CLERK'S LETTER to counsel advising appeal has been listed for possible dismissal due to jurisdictional defect.
9/23/93	RESPONSE by Paul Alan Levy, Esq. to clerk's letter for possible dismissal due to jurisdictional defect, filed.
9/23/93	RESPONSE by Vincent Candiello to clerk's letter for possible dismissal due to jurisdictional defect, with service, filed.
9/30/93	BRIEFING NOTICE ISSUED. Appellant brief and appendix due 11/9/93.
10/7/93	CLERK'S LETTER to counsel advising that jurisdictional defect will not be submitted at this time, responses will be sent to the merits panel, etc. SEND TO MERITS PANEL

DATE	PROCEEDINGS
11/9/93	MOTION filed by Oil Chem Atomic, UMWA, NLG Sugar Law Center and Intl Union United for leave to file amicus curiae brief in support of Appellants. Certificate of Service dated 11/9/93.
11/9/93	BRIEF on behalf of Appellant Charles A. Thomas, Appellant Darren S. Boop, Appellant Robert W. Bower, Appellant William D. Bridge, Appellant James Clingan, Appellant Neal B. Housner, Appellant Jonathan L. Noaker, Appellant Wayne D. Orner, Appellant Gerald W. Ranck, Appellant Harold E. Van Sickle, Appellant Richard A. Winter, Appellant Eugene L. Witmer, Pages: 36, Copies: 10, Delivered by mail, filed. Certificate of service date 11/9/93.
11/9/93	APPENDIX on behalf of Appellant Charles A. Thomas, Appellant Darren S. Boop, Appellant Robert W. Bower, Appellant William D. Bridge, Appellant James Clingan, Appellant Neal B. Housner, Appellant Jonathan L. Noaker, Appellant Wayne D. Orner, Appellant Gerald W. Ranck, Appellant Harold E. Van Sickle, Appellant Richard A. Winter, Appellant Eugene L. Witmer Copies: 4 Volumes: 1, Delivered by mail, filed. Certificate of service date 11/9/93.
11/30/93	AMICUS BRIEF on behalf of Oil Chemical and Atomic Workers, et al., Pages: 20, Copies: 10, Delivered by mail, filed. Certificate of service date 11/9/93. See 11/30/93 Order.
11/30/93	ORDER (Greenberg, Authoring Circuit Judge) granting motion by the Oil, Chemical and Atomic Workers Int. Union, etc., for leave to file an amici curiae brief in support of appellants. This order does not grant the amici the right to participate in oral argument if there is oral argument as that is determined by the merits panel, filed.

DATE	PROCEEDINGS
12/9/93	BRIEF on behalf of Appellee N Star Steel Co Inc, Pages: 41, Copies: 10, Delivered by mail, filed. Certificate of Service date 12/9/93.
12/14/93	MOTION filed by Chamber Commerce US for leave to file brief amicus curiae in support of Appellee. Certificate of Service dated 12/9/93.
12/23/93	REPLY BRIEF on behalf of Appellants, Copies: 10, Delivered by mail, filed. Certificate of service date 12/23/93.
12/28/93	ORDER (Greenberg, Authoring Judge and Circuit Judge) granting motion by Chamber of Commerce of the USA for leave to proceed as amicus curiae in support of Appellee. This order does not include the right to present oral argument as the merits panel decides that point, filed.
12/28/93	AMICUS BRIEF on behalf of US Chamber Commerce, Pages: 12, Copies: 10, Delivered by mail, filed. Certificate of service date 12/9/93. See 12/28/93 Order.
12/28/93	APPEARANCE from Attorney Robin S. Conrad on behalf of Amicus-appellee Chamber Commerce US, filed.
1/13/94	APPEARANCE from Attorney Cynthia S. Akers and Joseph S. Hornack on behalf of Amici-Appellants Guild/Sugar Law Center for Economic and Social Justice, Oil Chemical & Atomic Workers International Union & United Mine Workers of America, filed.
3/1/94	CALENDARED for Tuesday, May 24, 1994.
5/24/94	ARGUED 5/24/94 Panel: Cowen, Roth, Circuit Judges and Ackerman, District Judge.
8/10/94	OPINION (Cowen, Roth, Circuit Judges and Ackerman, Authoring Judge, District Judge), filed.

DATE	PROCEEDINGS
8/10/94	JUDGMENT, the judgment of the district court entered August 26, 1993 is REVERSED. The cause is REMANDED to the district court for further proceedings consistent with the opinion of this court. Costs taxed against appellee, filed.
8/15/94	BILL OF COSTS filed by Appellants Charles A. Thomas et al. Certificate of service dated 8/12/94.
9/1/94	MANDATE ISSUED, filed.
10/20/94	REPORTER at 32 F.3d: 53.
11/14/94	Supreme Court of U.S. notice filed advising petition for writ of certiorari filed by Appellee N Star Steel Co Inc. Filed in the Supreme Court on 11/7/94 at Supreme Ct. case number: 94-834.
1/13/95	U.S. Supreme Court order dated 1/6/95 at S.C. number: 94-834, granting petition for writ of certiorari by Appellee N Star Steel Co. Inc. This case is consolidated with S.CT. No. 94-835, Crown Cork & Seal Co., Inc. v. United Steelworkers of America, AFL-CIO-CLC and a total of one hour is allotted for oral argument, filed.

[Filed May 25, 1993]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number: 4:CV-92-1507
(Judge Muir)

CHARLES A. THOMAS, *et al.*

v.

NORTH STAR STEEL COMPANY, INC.

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment be and hereby is entered in favor of the Defendant North Star Steel and against the Plaintiffs.

Date: May 25, 1993

LANCE S. WILSON
Clerk

/s/ Barbara Poust
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

(Title Omitted in Printing)

CERTIFICATE OF SERVICE

I, MARGARET L. MARKLE, ESQUIRE, hereby certify that I served two true and correct copies of the Motion to Vacate Judgment Pursuant to Fed. R. Civ. P. 59(e) upon the counsel named below by placing same in the United States Mail, First Class, Postage Prepaid, this 8th day of June, 1993.

Vincent Candiello, Esquire
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904

RUDNITSKY & HACKMAN, P.C.

By: Margaret L. Markle
MARGARET L. MARKLE, ESQUIRE
Attorney No. 46658
Attorney for Plaintiffs
9 Courtyard Offices
Selinsgrove, PA 17870
(717) 743-2333

[Filed Sep. 3, 1993]

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

(Title Omitted in Printing)

NOTICE OF APPEAL

All plaintiffs in this case, including but not limited to Charles A. Thomas, Darren S. Boop, Robert W. Bower, William D. Bridge, James Clingan, Neal B. Housner, Jonathan L. Noaker (whose name is misspelled in some pleadings as "Nooker"), Wayne D. Orner, Gerald W. Ranck, Harold E. Van Sickle, Jr., Richard A. Winter, and Eugene L. Witmer, Sr., appeal from the judgment dismissing this action and from the orders dismissing their action and denying reconsideration dated, respectively, May 25, 1993, and August 26, 1993.

Respectfully submitted,

/s/ Paul Alan Levy
PAUL ALAN LEVY
Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 833-3000

/s/ Karen Hackman
KAREN HACKMAN
Rudnitsky & Hackman, P.C.
Suite 130
9 Courtyard Offices
Routes 11 & 15
Selinsgrove, Pennsylvania 17870
(717) 743-2333

Attorneys for Plaintiffs-Appellants

August 31, 1993

[LETTER TO CHARLES THOMAS]

NORTH STAR STEEL PENNSYLVANIA
230 Lower Market Street, Milton, PA
Telephone (717) 742-7661

August 20, 1992

Mr. Charles A. Thomas
R.D. #1, Box 1107
Lewisburg, PA 17837

Dear Charlie:

As you know, North Star Steel Company's ("NSS") Milton plant has been temporarily shut down since March 1, 1991. This shutdown has resulted in numerous lay-offs which we initially hoped were temporary in nature. We now realize that a number of positions will be eliminated on a permanent basis. We regret to inform you that your position in one of these. The effective date of your separation from NSS service is September 1, 1992.

You will be paid severance in accord with the NSS/Cargill Severance Pay Policy. The severance pay will be calculated by using the lesser of your years of service, or eight years two months, since Milton Manufacturing Company was formed on January 1, 1983 and the lay-off commenced on March 1, 1991.

All NSS employee benefit coverages will cease effective September 1, 1992. You have the right to elect to continue your health and dental coverages, for a period of 18 months, under COBRA at 102% of the actual group coverage rates (not the employee rate). You must make your election within 60 days (by October 30, 1992) of your election of coverage. Premium payments must be made within 45 days (by December 14, 1992) of your election of coverage. A failure to make an election or to make the required initial premium payment will result in termi-

nation of your health and dental coverage effective September 1, 1992.

Please contact Robin Johnson at 742-7661 if you have any questions.

Thank you for your past service and best of luck in your future endeavors.

Regards,

/s/ Harold Olden
HAROLD OLDEN
General Manager

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Title Omitted in Printing)

AFFIDAVIT OF CHARLES A. THOMAS

Charles A. Thomas, being first duly sworn, deposes and says as follows:

1. I was employed by North Star Steel Company, Inc., as Purchasing Manager at its Milton, Pennsylvania facility from 1988, when this company purchased the facility, until I was laid off on February 25, 1991. I had been employed at this facility continuously since 1960, under successive owners.

2. I occupied a salaried, non-bargaining unit position. Other non-union, salaried positions included foremen, clerks, supervisors, managers, and others. Production workers were represented by the Steelworkers Union.

3. Altogether, approximately 320 persons were employed at the Milton, Pennsylvania production facility in late 1990-early 1991, to the best of my recollection, nearly all of them on full-time active status.

4. The Milton, Pennsylvania production facility consists of a melt shop and casting area, a rolling mill and attached storage/shipping area, a machine shop, and other areas related to maintenance, and the facility's main offices. These are all located in one geographical area; a scrapyard is located about three blocks from the plant.

5. On February 25, 1991, at approximately 9:30 a.m., without explaining why, Harold Olden, General Manager, told me to contact our suppliers to place our purchase or-

ders "on hold." At approximately 10:30 a.m., I was advised to report to the training room at 11:45 a.m. for a meeting. I did so and found most of the salaried employees present. No one had been informed of the purpose of the meeting.

6. Harold Olden, the General Manager, came into the training room at approximately 11:55 a.m. He stated that due to economic reasons, North Star Steel, Milton, was ceasing all production immediately and all salaried employees in the room were laid off indefinitely, effect as of now, and anyone could leave the room right now. When someone asked how long the layoff would last, he said he didn't know but would keep employees informed. The meeting lasted approximately five minutes and most of the people left immediately. I returned to my office to complete the task of calling suppliers, and I left the plant at about 2:00 p.m.

7. I later learned from speaking with co-workers that a meeting was held upstairs prior to our meeting with supervisors who would not be laid off. Another meeting was held in a separate room for salaried clerical employees who would continue to work until their jobs were complete. Also, at approximately the same time, meetings were conducted throughout the plant in which the union workers were told of the immediate, indefinite shut down. To the best of my knowledge, all but twelve union employees were laid off at this time.

8. In the weeks and months which followed, I stopped by the plant on three or four occasions to try to learn whether the company planned to reopen or whether the company would issue severance payments. I did not receive any answer except that the company was not prepared to pay severance benefits.

9. Finally, I began writing letters to North Star management and to Cargill Management asking about sever-

ance pay and W.A.R.N. damages. I got a reply in May, 1992, indicating that the company would pay what it was obligated to pay after company lawyers had reviewed the Court's opinion in the union's case against the company. A true copy of Cary Humphries' May 21, 1992 letter to me is appended hereto as Attachment A.

10. In July 1992, I was able to retain an attorney who wrote, at my direction, to Cary Humphries at Cargill demanding payment of W.A.R.N. damages. My attorney received a reply from Cargill's Law Department dated August 21, 1992, which she made available to me. A true copy of that letter is appended hereto as Attachment B.

11. In August 1992, I received a termination notice and severance pay. In January 1993, I received an additional amount of severance pay to correct an error.

12. I received my regular semi-monthly salary on the last day of February 1991. I received vacation pay in 1991 and 1992. Also, I continued to receive my health and other insurance benefits until my termination effective September 1, 1992.

13. To the best of my knowledge, other laid off, salaried employees received vacation pay and other benefits in the same manner as I did. To this day, none of us have received any W.A.R.N. damages.

Further affiant sayeth naught.

/s/ Charles A. Thomas
CHARLES A. THOMAS

(Notary Omitted in Printing)

ATTACHMENT A

CARGILL
15407 McGinty Road West
Wayzata, MN 55391-2399
Mail Address: PO Box 9300
Minneapolis, MN 55440-9300

May 21, 1992

Mr. Charles A. Thomas
P.O. Box 204
Lewisburg, PA 17837

Re: Your Letter of April 15, 1992

Dear Charles:

As promised, this is in response to your letter to Mr. MacMillan dated April 15, 1992.

At the time the NSS Milton plant was shut down, we had all hoped the work stoppage would be the temporary result of difficult economic times for the steel industry. As of this date, we are still uncertain as to the economic feasibility and viability of reopening the Milton plant.

The uncertainty surrounding the final determination of the Milton plant does have an effect on your severance question. NSS does not pay severance where there is a temporary layoff. However, once the layoff is permanent, salaried employees receive severance in accord with the Cargill Severance Pay Plan which is outlined in the Cargill Salaried Employees Handbook. Past service credit is honored in determining the severance amount unless you received severance pay from the predecessor company when NSS purchased Milton Manufacturing. Therefore, once the decision on the Milton plant is final, you will be contacted either about returning to work or your severance pay, as applicable.

Your question on the 60-day WARN Act pay is more difficult to respond to, given the uncertainty relating to the interpretation of the judge's opinion in this case. Company lawyers are currently reviewing the opinion. However, I can tell you that if NSS is required to pay consideration above and beyond the severance pay payable to affected Milton workers, we would include salaried employees in that group.

I know that the period of uncertainty is frustrating to all of us. We will be getting back to you and your coworkers once the final decision is made concerning the Milton plant.

Sincerely,

/s/ Cary Humphries
CARY HUMPHRIES
CH/FLB/dcw
ci/3326

Attachment B

CARGILL, INCORPORATED
LAW DEPARTMENT

P.O. Box 9300
Minneapolis, MN 55440

August 21, 1992

Writer's Direct Dial Number
(612) 475-5377

Ms. Karen L. Hackman
Rudnitsky & Hackman, P.C.
9 Courtyard Offices, Suite 130
Routes 11-15
Selinsgrove, PA 17870

Re: NSS Milton Plant

Dear Ms. Hackman:

This is in response to your earlier letter concerning the WARN Act and its applicability to salaried employees at North Star Steel Co.'s (NSS) Milton, Pennsylvania facility.

We are aware that the WARN Act applies to both salaried and hourly employees. It is the intent of NSS to provide WARN benefits to salaried employees in the same manner that it provides said benefits to hourly employees. Unfortunately, Judge Muir's ruling has left some interpretive gaps which must be decided by the District Court before benefits are paid. These include the appropriate calculation of WARN Act benefits and appropriate offsets to these benefits. A tentative hearing is scheduled at the end of September to deal with these issues. Once a final interpretation is rendered, salaried employees will be provided WARN benefits on the same basis as their hourly counterparts, consistent with Judge Muir's ruling.

Sincerely,

/s/ Frederick L. Budde
FREDERICK L. BUDDE

FLB: jh
cil/3473

cc: J. Smythe/NSS/51
C. Humphries/Admin/Lake

SUPREME COURT OF THE UNITED STATES

Nos. 94-834, 94-835

NORTH STAR STEEL CO.

v.

THOMAS, CHARLES, *et al.*

CROWN CORK & SEAL CO., INC.

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

Friday, January 6, 1995

The petition for writ of certiorari is granted. The case is consolidated and a total of one hour is allotted for oral argument.